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FEB 3

No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

MOTION ON BEHALF OF THE PETITIONER TO MODIFY JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

MOTION BY PETITIONER TO MODIFY JUDGMENT

Comes now the Solicitor General, on behalf of the Secretary of the Interior, petitioner in the above-entitled case, and respectfully moves this Court to modify its judgment herein by directing that the judgment of the Court of Appeals for the District of Columbia be modified and that the case be remanded to the Supreme Court of the District of Columbia with directions to that Court to so modify its judgment that it will require the Secretary of the Interior, in his final adjustment of the disputed items of respondent's claim under the War Minerals Relief Act, to determine whether

any of the items were in fact losses suffered by the claimant and its stockholders by reason of producing or preparing to produce pyrites in compliance with any request or demand of any of the agencies referred to in said Act; and if so, to determine what allowance therefor shall be just and equitable, and to include such allowance, if any, in the final adjustment of the claim.

It is also respectfully moved that this Court stay the issuance of its mandate pending the disposition of this motion.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1933.

MEMORANDUM IN SUPPORT OF MOTION

In its opinion in this case, rendered on January 16, 1933, three items were considered which had been disallowed by the Secretary of the Interior in the adjustment of petitioner's claim under the War Minerals Relief Act. Upon an analysis of the record this Court concluded that each of the items appeared to have been disallowed by the Secretary of the Interior without consideration of the facts, and as matter of law, because none of them was of such a character as to be allowable under any circumstances. Concluding that the judgment of the Supreme Court, affirmed in the Court of Appeals, authorized a writ of mandamus directing that the Secretary of the Interior "should treat the disputed items in the respondent's claim as permissible as matter of law and to proceed with their final adjustment upon consideration of all the facts," this Court affirmed the judgment below.

It appears that under the judgment of the Supreme Court of the District of Columbia (R. 32) which was affirmed in the court below (R. 37) it may with some reason be contended that the Secretary of the Interior is required to allow all of the items in question; that the only question open for his consideration is the amount of each item actually expended, and that it will not be permissible for the Secretary to consider, as a question of fact, whether the equipment and machinery was ac-

quired prior to any stimulation under the statute by the sole stockholders of the corporate claimant, and having found the fact to be that it was not so acquired, to disallow the item either as matter of law or because he considers that justice and equity require that no allowance be made. Similarly, there is at least room for contention that under the judgment of the Supreme Court of the District of Columbia the Secretary will not be free to consider whether the expenditures for salaries were reasonable and necessary in the production of a war mineral, or whether the attorneys' fees were incurred in producing a war mineral.

The modification of the judgment of this Court as suggested in this motion is deemed to be necessary in order to enable the courts below to effectuate the decision of this Court as outlined in its opinion.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
W. MARVIN SMITH,
Attorney.

E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor,
Of Counsel.

FEBRUARY, 1933.

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IN THE

SUPREME COURT OF THE UNITED STATES

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DOCKET NO. 335

RAY LYMAN WILBUR, Secretary of the Interior,

Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent.

MOTION OF RESPONDENT TO ADVANCE

EDGAR WATKINS,
MARION SMITH,
MAC ASBILL,
Counsel for Respondent.

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THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent.

MOTION OF RESPONDENT TO ADVANCE

COMES NOW respondent in the above entitled cause and moves that this case be advanced for early hearing and in support of its motion makes the following brief statement of the matters involved and the reasons relied upon for the advancement:

1.

The case involves the correctness of the disallowance as a matter of law by the Secretary of the Interior of items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of certain machinery and plant equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation and the amount paid for legal services. Questions involving the Secretary's disallowance of salaries and legal expenses are presented in a number of suits now pending in

the Supreme Court of the District of Columbia. It is in the public interest to have a speedy determination of the issues involved herein in order to expedite the administration of the War Minerals Relief Act.

2.

Suits pending in the Supreme Court of the District of Columbia and argued in June, 1932, have not been decided, presumably awaiting a decision of this case, as similar questions are involved.

WHEREFORE, respondent prays that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

EDGAR WATKINS,
MARION SMITH,
MAC ASBILL,

Counsel for Respondent.